

**TITLE XIV  
BUSINESS CORPORATION CODE**

**CHAPTER 1 CORPORATIONS WHOLLY OWNED BY THE TRIBE**

**Section 14-1-1           SCOPE**

Sections 14-1-1 through 14-1-14 apply to all tribal corporations and enterprises wholly owned by the Tribe, whether directly or as a subsidiary of another tribal corporation or enterprise wholly owned by the Tribe, as provided in section 14-1-2. Any section or provision which by its terms applies to corporations or businesses not wholly owned by the Tribe shall apply to corporations or businesses not wholly owned by the Tribe.

**Section 14-1-2           APPLICATION**

(1) Corporations directly owned by the Tribe. The consent of the Tribal Council shall be required prior to the incorporation under this Code of any corporation to be wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a corporation to be wholly owned by the Tribe, a certified copy of a resolution of the Tribal Council authorizing the formation of the corporation.

(2) Corporations indirectly owned by the Tribe. The consent of the board of directors of the corporation wholly owned by the Tribe shall be required prior to the incorporation under the Code of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a subsidiary corporation to be wholly owned by a parent corporation that is wholly owned by the Tribe, a certified copy of a resolution of the board of the parent corporation authorizing the formation of the subsidiary corporation.

(3) Non-Profit Corporations directly owned by the Tribe. The consent of the Tribal Council shall be required prior to the incorporation under this Code of any Non-Profit corporation wholly owned by the Tribe. For this purpose, the incorporator shall file with the Tribal Secretary, when the incorporator files the articles of incorporation of a corporation to be wholly owned by the Tribe, a certified copy of a resolution of the Tribal Council authorizing the

formation of the Non-Profit corporation. The articles of incorporation of the Non-Profit corporation shall set forth the following:

(a) A corporate name for the Non-Profit corporation, which shall include any of the following;

- (1) incorporated
- (2) corporation
- (3) company, or
- (4) limited.

(b) One of the following statements;

- (1) This corporation is a public benefit corporation,
- (2) This corporation is a mutual benefit corporation, or
- (3) This corporation is a religious corporation.

(c) The purpose(s) of the corporation, which may be, either alone or in combination with other purposes, the transaction of any lawful activity, which may include, but shall not be limited to, the following;

- (1) Charitable,
- (2) benevolent,
- (3) educational,
- (4) civic,
- (5) religious, or
- (6) cultural.

(d) Provisions not inconsistent with law regarding the following:

- (1) Managing and regulating the affairs of the corporation,
- (2) Defining limiting, and regulating the powers of the corporation, its board of directors, and members; and
- (3) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

- (4) Designation in Articles The articles of a corporation wholly owned, directly or indirectly, by the Tribe and subject to the provisions of Sections 14-1-1 to 14-1-13 shall expressly so state and when accepting the articles for filing, the Tribal Secretary shall note that the corporation is governed by the provisions of this Code applicable to wholly owned tribal corporations.

**14-1-3 SPECIAL POWERS, PRIVILEGES AND IMMUNITIES OF CORPORATIONS WHOLLY OWNED BY THE TRIBE**

(1) Scope. The special powers, privileges and immunities described in this section shall be available only to a corporation wholly owned, directly or indirectly, by the Tribe.

(2) Jurisdictional and tax immunities. All of the rights, privileges and immunities of the Tribe concerning federal, state, or local taxes, regulations and jurisdiction are hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe to the same extent that the Tribe would have such rights, privileges and immunities if it engaged in the activities undertaken by the corporation. Absent consent by the corporation, a corporation wholly owned, directly or indirectly, by the Tribe shall not be subject to taxation by the Tribe, except to the extent that such taxation is necessary and reasonably appropriate to compensate the Tribe for services provided to the corporation by the Tribe.

(3) Sovereign Immunity. The sovereign immunity of the Tribe is hereby conferred on all tribal corporations wholly owned, directly or indirectly, by the Tribe. A corporation wholly owned, directly or indirectly, by the Tribe shall have the power to sue and is authorized to consent to be sued in the court, and in all other courts of competent jurisdiction, provided however, that:

(a) No such consent to suit shall be effective against the corporation unless such consent is:

- (1) Explicit,
- (2) Contained in a written contract or commercial document to which the corporation is a party, and
- (3) Specifically approved by the board of directors of the corporation, and

(b) Any recovery against such corporation shall be limited to the assets of the corporation.

Any consent to suit may be limited to the court or courts in which suit may be brought to the matters that may be made the subject of the suit and to the assets or revenues of the corporation against which any judgment may be executed.

**14-1-4 OPERATIONS OUTSIDE TERRITORY OF TRIBE**

(1) No economic enterprise wholly owned by the Tribe or any subsidiary thereof at any level shall establish or organize a subsidiary under the laws of any other jurisdiction without the express written consent of the Tribal Council. Any subsidiary established under the laws of another jurisdiction without the express written consent of the Tribal Council shall be deemed unauthorized and the establishment shall be considered an ultra vires act and void.

(2) Notwithstanding anything else to the contrary in this Code, an economic enterprise wholly owned by the Tribe or any subsidiary thereof at any level may register as a foreign business in another jurisdiction so long as the economic enterprise or subsidiary actually conducts business within that other jurisdiction and may register a trade name or fictitious business name in another jurisdiction to either conduct business in that jurisdiction or as necessary to protect a trade name registered under the laws of the Tribe.

**14-1-5 TRADE NAMES**

(1) Any individual or business entity may register a trade name which is not immoral, deceptive, scandalous, disparaging, or already registered by filing an application for registration with the Tribal Secretary that includes the following:

(a) The name and address of the applicant for registration;

(b) The name and address of the business which will use the trade name, if not the applicant;

(c) The trade name sought to be registered; and

(d) The signature of the applicant.

(2) Upon the filing of an application for trade name, the Tribal Secretary shall determine whether the trade name has been registered previously and, if not, the Tribal Secretary shall return a duplicate copy of the application stamped with the date of filing to the applicant.

(3) A trade name registered under this Section shall be effective for ten years from the date of filing and may be renewed anytime within six months prior to its expiration. Once a trade name has expired, the trade name shall be subject to registration as though never previously registered. A trade name registered by the Tribe or any economic enterprise owned by the Tribe or any subdivision thereof at any level shall be effective in perpetuity.

(4) A trade name may be transferred from one person or business entity to another by filing a notice of transfer with the Tribal Secretary that includes the following:

(a) The name and address of the transferor;

(b) The name and address of the transferee;

(c) The name and address of the business which will use the trade name, if not the transferee; and

(d) The signature of the transferor.

(5) Except upon a valid transfer, a trade name shall follow and be the property of the business entity designated for its use or the applicant, if no separate business entity is indicated, and shall transfer with the business entity's assets upon any merger, consolidation, sale, or other transfer of the business entity.

(6) A business entity or the applicant, if no separate business entity is indicated, which registers a trade name under this Section may conduct business using the trade name and may enter into legally binding obligations using the legal name of the business entity or the applicant, if no separate business entity is indicated, followed by "d.b.a." followed by the trade name and such obligations shall be deemed those of the business entity or the applicant, if no separate business entity is indicated.

(1) Removal of Directors. A director of a corporation wholly owned, directly or indirectly, by the Tribe may be removed with cause by the Tribal Council.

(2) Loans to Directors. A corporation wholly owned, directly or indirectly by the Tribe may not lend money to or guarantee the personal obligation of a director, officer or employee of the corporation under any circumstances.

**14-1-7 SHARES IN CORPORATIONS WHOLLY OWNED BY THE TRIBE SHAREHOLDERS; VOTING.**

(1) Shares in wholly owned corporations. Share certificates (or transaction statements for uncertified shares) of corporations wholly owned, directly, by the Tribe shall be issued in the name of the Tribe, and all such shares shall be held by and for the Tribe. No member of the Tribe shall have any personal ownership interest in any corporation wholly owned, directly or indirectly, by the Tribe, whether by virtue of such person's status as a member of the Tribe or otherwise.

(2) Shares. A corporation wholly owned, directly, by the Tribe may not issue preferred or special shares.

(3) Voting. A member of the Tribal Council shall be authorized to vote shares of the corporation owned by the Tribe in the following manner: Each member shall have the right to vote that number of shares which is equal to a fraction of the total shares owned by the Tribe. The fraction is calculated by dividing the total number of shares owned by the Tribe by the number of Tribal Council members holding such office at the date on which the vote is taken. Each member of the Tribal Council shall enjoy such voting rights in the corporation as is provided by the Constitution and bylaws of the Tribe to such person as a member of the Tribal Council. Such voting rights shall be enjoyed for as long as such council member remains a duly elected member of the Tribal Council. In voting the shares of a corporation wholly owned by the Tribe, the members of the Tribal Council are acting not in a personal capacity but in a representative capacity on behalf of the Tribe itself.

(4) Proxies illegal. Any proxy given for the voting of shares in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

(5) Voting trusts illegal. Any voting trust agreement for any interest held in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

(6) Shareholder control agreements illegal. Any shareholder control agreement for any interest in a corporation wholly owned, directly or indirectly, by the Tribe shall be void and unenforceable.

#### **14-1-8      LIABILITY OF TRIBE AS A SHAREHOLDER**

Neither the Tribe nor any member of the Tribal Council shall be under any obligation to a corporation wholly owned, directly or indirectly, by the Tribe or to the creditors of any such corporation and the Tribe shall not be deemed to have waived any of the Tribe's privileges or immunities if the Tribe incorporates, owns or operates a corporation, directly or indirectly.

#### **14-1-9      SHAREHOLDER MEETINGS**

(1) Annual Meetings. Annual meetings of the Tribal Council, in its capacity as the shareholders of a corporation wholly owned, directly by the Tribe, shall be held at such time as the board of directors shall determine and at a location within the Ponca Services Areas. If the board of directors fails to set the time and date of such meeting, it shall be held on the second Tuesday in January of each year. At such annual meeting, the Tribal Council, in its capacity as the shareholders of the corporation, shall transact such business as may properly be brought before the meeting. Such meetings may be called and held in the same manner as applicable law provides for meetings of the Tribal Council.

(2) Special Meetings. Special meetings of the Tribal Council in its capacity as the shareholders of the corporation, may be called and held for any purpose in the manner provided for the call and holding of special meetings of the Tribal Council.

(3) Notice of Meetings The board of directors shall notify the Tribal Council of the date, time, and place of the annual meetings of shareholders at least 20 days before the meeting. Notices shall be deemed to be effective if placed in the USPS (US Mail), with proper first class postage affixed, at least 22 days, (but not more than 62 days) prior to an annual meeting, and at least 7 days (but not more than 62 days) prior

to a special meeting, or on the date personally delivered to the Secretary of the Tribal Council.

(4) Time and Place of Shareholders' Meetings. Meetings of the shareholders of the corporation shall be held at the principal place of business or of the corporation or at such other location within the Ponca Service Areas at such time and place as the board of directors shall fix.

(5) Manner of Meeting. Except as otherwise provided in these Articles, the shareholders of the corporation may conduct regular or special meetings through the use of any means and procedures which are proper for meetings of the Tribal Council.

(6) Presiding Officer. The Chairman of the Tribal Council shall preside over any shareholders' meeting.

#### **14-1-10 ASSETS; DISTRIBUTION OF INCOME**

(1) Assets. Subject to the contractual and sovereign rights of others, including the Tribe, the corporation shall have as its corporate assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of, the following:

(a) All funds which the corporation may acquire by subscription, grant, gift, loan or other means,

(b) All interests in real and personal property, whether of a tangible or intangible nature, which the corporation may acquire by subscription, grant, gift, loan, purchase, lease or other means, and,

(c) All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds, arising from any of the foregoing.

(2) Distribution of Net Income to Tribe Required. All or that portion of the net income of a corporation wholly owned, directly, by the Tribe shall be distributed to the Tribe at such time as the Tribal Council may determine. The net income of any wholly owned subsidiary of such a corporation and the corporation's share of the net income of any subsidiary of such a corporation shall be determined in accordance with generally accepted accounting principles. Upon request of the Tribal Council, the board of directors of a corporation



wholly owned, directly, by the Tribe will, if the corporation controls a subsidiary, cause the subsidiary to distribute to the corporation all or such portion of the net income of the subsidiary as may be requested by the Tribal Council.

**14-1-11      MERGERS**

(1) An economic enterprise wholly owned by the Tribe or any subsidiary thereof at any level may merge with one or more other constituent organizations, including its own subsidiary, if:

(a) The merger is authorized and not prohibited by the governing law of each constituent organization;

(b) Each of the constituent organizations complies with its governing law in accomplishing the merger;

(c) The plan of merger provides that an economic enterprise wholly owned by the Tribe or subsidiary thereof at any level shall be the sole surviving entity of the merger; and

(d) The ownership interest of the surviving entity is entirely held by the Tribe or a corporation wholly owned by the Tribe or a wholly owned subsidiary thereof.

(2) Any merger under this Code must be in accordance with a plan or agreement of merger adopted by all merging entities. In the case of an economic enterprise wholly owned by the Tribe, a plan of merger must be consented to by the Tribal Council and the governing body of the merging entity. In the case of a subsidiary, a plan of merger must be consented to by the board or other governing body of the subsidiary and the governing body of the merging entity. If an organization proposes to merge with a subsidiary which it wholly owns, only the consent of the organization is required. A plan or agreement of merger must include:

(a) The name and form of each constituent organization;

(b) That the economic enterprise wholly owned by the Tribe or subsidiary thereof shall be the surviving organization;

(c) The terms and conditions of the merger, including the manner and basis for converting the interests in

each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(d) Any amendments to be made by the merger to the surviving organization's organizational documents.

(3) Subject to any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the Tribal Secretary for filing, the constituent entities may amend the plan or abandon the merger as provided in the plan or, except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

(4) After each constituent organization has approved a plan or agreement of merger, articles of merger must be signed on behalf of each constituent organization, or just the surviving organization if the merger is with a wholly owned subsidiary, and filed with the Tribal Secretary. Articles of merger must include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization, which must be organized under and governed by the laws of the Tribe;

(c) The date the merger is effective, which may set forth a precise time in hours and minutes of effectiveness;

(d) If the surviving organization is to be created by the merger, the organizational document that creates the organization and is in a public record;

(e) If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization and are in a public record;

(f) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute; and

(g) Any additional information required by the governing statute of any constituent organization.

(5) A merger becomes effective upon the later of the date and time specified in the articles of merger or when filed with the Tribal Secretary.

(6) When a merger becomes effective:

(a) The surviving organization continues or comes into existence;

(b) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) All debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(e) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred unless the merger necessarily moots the action or proceeding or otherwise negates such action or proceeding;

(f) All of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) Except as otherwise provided in the plan or agreement of merger, the terms and conditions of the plan or agreement of merger take effect;

(h) If the surviving organization is created by the merger, the organizational document that creates the organization becomes effective; and

(i) If the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

**14-1-12 PARTIAL MERGERS**

The Tribal Council may merge one or more subsidiaries at any level, divisions, operations, or other constituent parts of an economic enterprise wholly owned by the Tribe or subsidiary thereof at any level into another existing economic enterprise wholly owned by the Tribe that exists or is to be created by the merger utilizing the procedures under this Code. Notwithstanding anything to the contrary in this Code, if subsequent to such a partial merger, the original entity maintains any subsidiary at any level, division, operation, or constituent part which is not merged into the other economic enterprise, the original entity shall continue in existence.

**14-1-13 VOLUNTARY DISSOLUTION BY INCORPORATORS**

A corporation wholly owned, directly, by the Tribe with no shares having been issued may be dissolved by a resolution adopted by the incorporators, or if a board of directors has been appointed or elected, by the board of directors and separately concurred in by a majority of the members of the Tribal Council. To the extent this provision conflicts with the articles of PEDCO, the Articles shall govern.

**14-1-14 VOLUNTARY DISSOLUTION BY SHAREHOLDERS**

A corporation wholly owned by the Tribe may be dissolved by a majority vote of the Tribal Council in accordance with the number of shares of the corporation with or without the consent of the board of directors of such corporation. Upon dissolution of a corporation wholly owned by the Tribe, all assets of the corporation shall be distributed to the Tribe and disposed of as directed by the Tribal Council, including assigning all such assets to a new or existing economic enterprise of the Tribe.

**14-1-15 SEVERABILITY; EFFECT OF INVALIDITY OR PART OF THIS CODE**

If the court shall adjudicate to be invalid or unconstitutional any clause, sentence, paragraph, section, article or part of this Code, such judgment or decree shall not effect, impair, invalidate or nullify the remainder of this Code, but the effect thereof shall be confined to the clause, sentence, paragraph, section, article or part of this Code as adjudged to be invalid or unconstitutional.

**14-1-16 EFFECTIVE DATE**

This Code shall be in full force and effect according to its terms from and after September 21, 2002.

**14-1-17 AUTHORITY**

This Code is enacted by the Ponca Tribe of Nebraska Tribal Council under the authority vested in the Tribal Council by Article V, Section 1, clause (a), (c), (f), (g), (j), (n) and (p) of the Constitution of the Ponca Tribe of Nebraska as amended. The Tribal Council reserves the right to repeal or amend the provisions of this Code, subject to the limitation of section 14-1-18.

**14-1-18 NO IMPAIRMENT OF CONTRACTS**

Otherwise lawful contracts and other obligations of any corporation shall not be impaired by a subsequent action of the Tribe or the Tribal Council. Actions to restrain any attempts to impair contracts of tribal corporations, or to declare such actions null and void, shall be available to any interested party in court. Nothing in this section shall be construed to restrict the general application of law or of this Code to the acts and contracts of tribal corporations.

Approved 12/6/10  
Resolution 10-71